

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CRIMINAL CASE NO. 1:09-cr-00023-MR-5**

UNITED STATES OF AMERICA,)

vs.)

KENNETH LEE GARDNER.)
_____)

ORDER

THIS MATTER is before the Court upon the Defendant's "Motion to Modify 3582(c)" [Doc. 322].

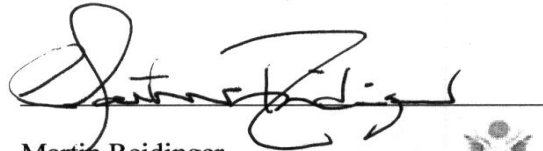
The Defendant, proceeding *pro se*, moves for a reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2) based on Amendment 750 to the Sentencing Guidelines with regard to crack cocaine offenses. [Doc. 322].

The Defendant was initially charged in this case with conspiracy to possess with intent to distribute a quantity of cocaine base (i.e., crack cocaine). [Doc. 1]. This charge, however, was dismissed without prejudice on July 31, 2009. [Doc. 179]. The Defendant subsequently pled guilty to possessing a quantity of *cocaine*, not cocaine base. [See Criminal Case No. 1:09-cr-0063-MR-DCK-1]. As this Defendant was not held responsible for any crack cocaine, Amendment 750 is not applicable and no reduction in sentence is warranted.

Accordingly, **IT IS, THEREFORE, ORDERED** that the Defendant's Motion [Doc. 322] is **DENIED**.

IT IS SO ORDERED.

Signed: July 10, 2013


Martin Reidinger
United States District Judge

